

# Review of Port Angeles Graving Dock Project Presentation to Transportation Commission

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- Summary of Recommendations with Agency and Legislative Auditor Comments
  - A summary table of the audit recommendations and the comments from the Office of Financial Management, Washington State Department of Transportation, and the Department of Archaeology and Historic Preservation are available in Appendix 2 of Report.
  - Legislative Auditor's Response to those comments (Available in Appendix 2a of Report, and summary table attached).



## Review of Port Angeles Graving Dock Project

### Legislative Auditor's Response to Agency Comments

Recommendations	OFM	WSDOT	DAHP	Auditor Comments on Agency Responses
<b><u>Recommendation 1</u></b> – Every new WSDOT process or improvement to an existing process should be accompanied by a mandatory implementation plan and followed by an evaluation plan.	Partially concurs	Generally concurs, subject to comment provided	Neutral position	Agree with OFM's comment that this should be implemented for substantive new processes, not for smaller or less significant changes.
<b><u>Recommendation 2</u></b> – WSDOT should require the use of critical path scheduling of the project development processes used on complex projects.	Concurs	Generally concurs, subject to comment provided	Neutral position	WSDOT statements that they used critical path scheduling for the Hood Canal Bridge Port Angeles Graving Dock project are not supported by the evidence provided to the audit team.  The findings of the audit and the statements included in WSDOT's response indicate this area should be prioritized for follow-up audit review.
<b><u>Recommendation 3</u></b> – WSDOT should require all project managers to have project leadership, management and responsibility training.	Concurs	Generally concurs, subject to comment provided	Neutral position	No comment.
<b><u>Recommendation 4</u></b> – WSDOT should utilize "strategic partnering" to improve both intra- and inter-agency relationships.	Partially concurs	Will not take a position	Neutral position	WSDOT's statements made in the response concerning intra-agency collaboration, and the findings of the audit indicate not all processes (such as strategic partnering) are understood throughout the Department.  The intent of the recommendation is to use established relationships and opportunities, as well as more formal strategic partnering. This approach will help ensure the recommendation can be implemented cost-effectively.  The findings of the audit and the statements included in WSDOT's response indicate this area should be prioritized for follow-up audit review.
<b><u>Recommendation 5</u></b> – WSDOT should continue to expand the utilization of consulting firms for both project and program management.	Partially concurs	Will not take a position	Neutral position	WSDOT indicates they have implemented some activities consistent with this recommendation, yet they do not take a position on the recommendation.  Agree with OFM that this recommendation should be implemented strategically for specific expertise and resource gaps.  Based on the WSDOT response, future follow-up audit review may be warranted.
<b><u>Recommendation 6</u></b> – WSDOT should encourage and support the development of internal subject matter experts.	Concurs	Generally concurs, subject to comment provided	Concurs	No comment.

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Recommendations	OFM	WSDOT	DAHP	Auditor Comments on Agency Responses
<b><u>Recommendation 7</u></b> – WSDOT should develop greater project oversight by its headquarters’ design, project management, and construction services.	Concurs	Concurs, expresses caution	Neutral position	WSDOT’s comments included statements that this recommendation was not supported by evidence. However, the audit finding was made consistent with Government Auditing Standards including section 7.29, 7.48-61, and 8.42. The finding was based on sufficient, competent, and reliable evidence and is consistent with results of a previous audit of WSDOT project management. WSDOT did not provide evidence during the technical review to contradict the finding that forms the basis of this recommendation.
<b><u>Recommendation 8</u></b> – WSDOT should incorporate ESA and fisheries considerations at the earliest possible opportunity for any transportation project with the potential for impact.	Concurs	Generally concurs	Neutral position	The intent of the recommendation is that the incorporation of ESA and fisheries issues needs to be done early in order to be factored into alternatives analysis.
<b><u>Recommendation 9</u></b> – WSDOT should promote stronger inter-agency permitting team leadership by finding someone who can not only provide a balance between the developer and regulator, but a focus for the overall team.	Concurs	Does not concur	Neutral position	<p>The audit clearly found that the interdisciplinary team permit streamlining process influenced the graving dock site selection process, and that the resource agencies’ focus on endangered species influenced the decision-making.</p> <p>WSDOT’s response does not demonstrate that they recognize the lesson’s learned from the Port Angeles Graving Dock project to improve utilization of interagency permitting teams.</p> <p>Based on the WSDOT response, future follow-up audit review may be warranted.</p>
<b><u>Recommendation 10</u></b> – WSDOT and other State agencies should scope early in the inter-agency permitting team set-up process for the expertise needed and secure these team members for the inter-agency permitting team via an active, ongoing and collaborative form of communication.	Concurs	Will not take a position	Neutral position	<p>The audit clearly found that the interdisciplinary team permit streamlining process influenced the graving dock site selection process, and that there was an absence of expertise in socio-economic, archaeological or cultural resources in the permit streamlining process.</p> <p>WSDOT does not take a position, and offers comments that demonstrate they do not recognize the lesson’s learned concerning utilization of appropriate expertise for permit streamlining activities.</p> <p>The findings of the audit and the statements included in WSDOT’s response indicate this area should be prioritized for follow-up audit review.</p>

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Recommendations	OFM	WSDOT	DAHP	Auditor Comments on Agency Responses
<b>Recommendation 11</b> – WSDOT needs to ensure that objectivity and fairness are maintained and that knowledgeable reviewers assess the On-Call Contract proposals. WSDOT should record the full names and positions of every evaluator. More importantly, documentation of the consultant selection process, including the consultant submittals and evaluator score sheets, must be retained in accordance with the State’s retention schedules.	Concurs	Concurs, with comment	Neutral position	No comment.
<b>Recommendation 12</b> – WSDOT should add a geoarchaeology/geomorphology specialty, including deep site testing, to the list of services in the Cultural Resource On-Call Contract scope of work for two reasons— 1) to enhance the multi-disciplined approach to archaeology, and 2) to reduce the chances of identifying significant resources late in the project, particularly during the construction phase, which could impact both the project budget and schedule.	Concurs	Will not take a position.	Concurs	DAHP concurs with the recommendation and indicates that for large scale projects, a geomorphological analysis prior to archaeological investigations will be critical for guiding archaeological recovery work.  WSDOT did not take a position on the recommendation. The audit clearly identified the absence of the utilization of appropriate expertise on the initial archaeological site evaluation. WSDOT’s response demonstrates that they do not recognize the lesson’s learned concerning utilization of appropriate expertise to reduce the chances of identifying significant archaeological resources late in a project.  The findings of the audit and the statements included in WSDOT’s response indicate this area should be prioritized for follow-up audit review.
<b>Recommendation 13</b> – WSDOT should require continuing education and training for all their cultural resources specialists to ensure continuation of the Department’s core competency. This training should be taken through the Advisory Council on Historic Preservation (ACHP), the National Highway Institute (NHI), or other qualified institution (e.g., university).	Concurs	Generally concurs, subject to comment	Concurs	WSDOT provided comments that the recommendation was not supported by the evidence.  The recommendation is made consistent with Generally Accepted Government Auditing Standards 8.28 and logically flows from the finding that <i>at the time</i> of the Port Angeles Graving Dock project, the cultural resources staff were not <i>required</i> to meet the Professional Qualifications Standards as defined in the Secretary of Interior’s Standards and Guidelines for Archeology and Historic Preservation. This recommendation underscores the need to make this training mandatory.

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Recommendations	OFM	WSDOT	DAHP	Auditor Comments on Agency Responses
<b><u>Recommendation 14</u></b> – WSDOT should require their project managers to contact their Cultural Resources Program for all of their Section 106 compliance issues. Have a WSDOT cultural resources expert review the project, scope of work, and Area of Potential Effect (APE) before the project is completely designed, and consult early with stakeholders.	Concurs	Concurs, inclusion of recommendation unclear	Concurs	WSDOT stated that they utilized their Cultural Resources Program on the Port Angeles graving dock project, consistent with the intent of this recommendation. This comment demonstrates they do not recognize the lessons learned concerning utilizing appropriate, qualified cultural resources expertise for <i>all</i> of their Section 106 compliance issues.  The findings of the audit and the statements included in WSDOT's response indicate this area should be prioritized for follow-up audit review.
<b><u>Recommendation 15</u></b> – WSDOT should implement methods to monitor a consultant's progress between major project milestones.	Concurs	Concurs, with comments	Concurs	DAHP concurs with the recommendation and indicates they are still waiting for the reports from the graving dock project, including the report detailing the second assessment which was due in 2004. DAHP further indicated that required monthly reports were given to DAHP every three to six months.  WSDOT's concurrence accompanied by a statement inferring the approach used to monitor consultant progress for the Port Angeles Graving Dock project was satisfactory, demonstrates that WSDOT does not recognize the lessons learned from the Port Angeles project.  The findings of the audit and the statements included in WSDOT's response indicate this area should be prioritized for follow-up audit review.
<b><u>Recommendation 16</u></b> – WSDOT should divide management tasks between a project manager and technical expert on large and complex projects.	Partially concurs	Will not take a position.	Neutral position	The audit clearly identified the gaps in performance due to supervision of archaeological consultants by staff without appropriate expertise.  A single project manager would be challenged to know everything about the technical services, consultants, and contractors required for large and complex projects. The intent of the recommendation is to ensure utilization of appropriate technical expertise for contract management for large and complex projects.

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Recommendations	OFM	WSDOT	DAHP	Auditor Comments on Agency Responses
<b><u>Recommendation 17</u></b> – WSDOT should have a standard protocol for project documentation that includes writing monthly summaries and recording meeting minutes.	Partially concurs	Does not concur	Concurs	<p>DAHP concurs with the recommendation and indicates that receipt of monthly reports and meeting notes will be critical to ensuring consensus on cultural resource issues.</p> <p>The audit findings clearly identified the gaps in performance concerning the documentation of the archaeological site assessment, mitigation activities, reporting, and decision-making. The review of project records and audit interview results indicated that not all parties had consistent information about decision-making at the site. The audit criteria for management and oversight indicate that minutes and monthly summaries are professionally accepted practices.</p> <p>A standard protocol would have addressed the gaps in the documentation of the archaeological work at the site. The recommendation leaves the development of the standard protocol to the agencies.</p> <p>Based on WSDOT's response, future follow-up audit review may be warranted.</p>
<b><u>Recommendation 18</u></b> – WSDOT should provide a detailed written description of the Area of Potential Effect (APE) to the consultant, and require that a detailed scope of work be submitted from the consultant as part of their proposal back to WSDOT. Any subsequent changes to the APE should be formally documented and discussed with regulatory agencies, Section 106 consulting parties, WSDOT's in-house experts, and WSDOT's archaeological consultant(s) performing the work.	Concurs	Generally concurs, subject to comments	Concurs	<p>DAHP concurs with the recommendation and states that there was disagreement and confusion about the Area of Potential Effect (APE) until the termination of the project.</p> <p>WSDOT provided comments that the recommendation is not supported by an accurate interpretation of federal regulations and best practices for identification of the APE. WSDOT's statement is inaccurate, and the APE was not appropriately documented for its archaeological consultants.</p> <p>The findings of the audit and the statements included in WSDOT's response indicate this area should be prioritized for follow-up audit review.</p> <p>WSDOT states that the report omits the fact that all parties approved the APE. The report acknowledges that all parties to the consultation signed the Memorandum of Agreement. Consistent with Section 8.46 of GAGAS, the report puts this into perspective, by noting that not all parties to the agreement were in possession of all of the technical information about the site at the time that the Memorandum of Agreement was signed. Further, the results of the second site assessment were limited to a one-page memorandum.</p>
<b><u>Recommendation 19</u></b> – WSDOT should continue to develop deep-site testing protocols to lessen the chances of missing a buried site in the future.	Concurs	Concurs, subject to comment	Concurs	No comment.

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Recommendations	OFM	WSDOT	DAHP	Auditor Comments on Agency Responses
<b>Recommendation 20</b> – WSDOT should initiate Section 106 consultation early because consultation lies at the core of the Section 106 process. Detailed project information and project changes, such as changes to the APE, need to be submitted to the SHPO as well as tribes, and other federal agencies and stakeholders to maintain an informative dialogue. Meeting minutes should be taken and distributed to the consultants and other stakeholders for eliciting further comments, making corrections, and for future reference should disputes or other needs arise.	Concurs	Generally concurs, subject to comments	Concurs	<p>WSDOT stated that the report indicated consultation for construction was initiated early and therefore provides no support for the audit recommendation.</p> <p>The audit clearly found that consultation with the Lower Elwha Klallam Tribe and the SHPO for the Port Angeles construction site began late and was initiated with the Tribe through a form letter. However, the report noted that there was consultation with tribes, other than the Lower Elwha Klallam Tribe, related to the bridge construction locations outside of Port Angeles.</p> <p>The findings of the audit and the statements included in WSDOT's response indicate WSDOT does not recognize the lessons learned from the Port Angeles project. This area should be prioritized for follow-up audit review.</p>
<b>Recommendation 21</b> – WSDOT should consider coordinating with the FHWA to revise WSDOT's Programmatic Agreement to help ensure that FHWA meets its responsibilities for undertakings pursuant to Sections 106 and 110 of the National Historic Preservation Act; and that these changes should include several key stipulations that are based on current best practices promoted by other state DOTs and FHWA divisions.	Concurs	Concurs, subject to "facts."	Concurs	<p>WSDOT commented that the 2000 Programmatic Agreement was revised each year. However, no evidence was provided to the audit team to document that the 2000 Programmatic Agreement was reviewed on an annual basis.</p>



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Recommendations	OFM	WSDOT	DAHP	Auditor Comments on Agency Responses
<b>Recommendation 22</b> – WSDOT should continue to pursue the implementation of a formal plan as required by the Millennium and Centennial Accords signed by both the State of Washington and the State of Washington’s federally recognized tribes. WSDOT has already developed a formal plan as outlined in Executive Order 1025.00 and we recommend that they continue to build on this plan as they continue to implement procedural Programmatic Agreements with tribes living in or having ancestral homelands in Washington. WSDOT should consider coordinating with the FHWA when and where possible with continuing to develop procedural Programmatic Agreements with tribes who have ancestral homelands in Washington and live in or outside of the state.	Concurs	Concurs, subject to comment	Neutral position	No comment
<b>Recommendation 23</b> – The DAHP and possible interested stakeholders such as WSDOT should adopt or amend a set of guidelines for the application of geology in all archaeological investigations and evaluations. Trained earth scientists should be required or highly recommended in all phases of archaeological investigations. The DAHP, should revise the archaeological guidelines and standards on how to perform fieldwork, laboratory work, and report writing. Geologic field work and documentation both need to be standardized between projects that are presented to the DAHP.	Concurs	Partially concurs	Concurs	DAHP concurred and indicates they have revised their standards and guidelines.  WSDOT’s partial concurrence and comments regarding the application of geology in archaeological evaluations, demonstrate a lack of understanding of the lessons learned about the need for utilization of appropriate expertise for conducting deep site testing of some construction sites.  The findings of the audit and the statements included in WSDOT’s response indicate this area should be prioritized for follow-up audit review.
<b>Recommendation 24</b> – WSDOT, FHWA, and DAHP should work together to secure resources (funding and labor) to help produce some standardized geologic mapping/modeling across areas that are expected to have a large developmental need for archaeological surveys in the next five to ten years	Partially concurs	Concurs	Concurs	No comment

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Recommendations	OFM	WSDOT	DAHP	Auditor Comments on Agency Responses
<b>Recommendation 25</b> – DAHP and consulting archaeologists should begin a dialog with geologists knowledgeable of Washington to discuss interpreted areas of high potential for deeply buried sites.	Concurs, subject to available funding	Concurs	Concurs	No comment
<b>Recommendation 26</b> – WSDOT, when defining the Area of Potential Effect on behalf of the lead federal agency, needs to consider what the impacts are to an archaeology site if subjected to vibration, settling/compaction, liquefaction, stress-strain, shearing, dewatering, flooding, oxidation, etc., caused by the undertaking. An archaeologist, other pertinent technical experts, and the SHPO and THPO, need to be consulted on the possible effects that might take place at and to the “site” given a set of circumstances predicted by the designers.	Concurs	Will not take a position	Concurs	DAHP concurs with the recommendation and comments that the effects listed in the recommendation need to be addressed in any treatment plan. WSDOT does not take a position on the recommendation, based on their comments that the new draft Section 106 Programmatic Agreement addresses the requirements for Areas of Potential Effect. While a Programmatic Agreement may address general information about identifying an APE, the Department must still develop an appropriate APE for each individual site, as defined in 36 CFR 800 concerning direct and indirect impacts of an undertaking. The findings of the audit and the statements included in WSDOT’s response demonstrate that this area should be prioritized for follow-up audit review.
<b>Recommendation 27</b> – WSDOT should require well-documented and standardized field notes, maps, figures, progress reports, final reports, etc. of their archaeological consultants.	Concurs	Concurs, subject to comment	Concurs	DAHP concurs and states they will insist on appropriate field descriptions and documentation, and will not accept reports that do not meet professional requirements. WSDOT concurred, but included comments that the recommendation was based on an incomplete review of the record. The audit team reviewed all documentation and field notes that were provided by WSDOT and their archaeological consultants. If additional documentation for the Port Angeles project exists, it was not provided to the audit team. The audit cites the lack of information available which formed the basis of this recommendation.
<b>Recommendation 28</b> – Future WSDOT projects should identify a lead Principal Investigator (e.g., federally qualified archaeologist) and define his/her role in detail.	Concurs	Concurs	Concurs	No comment

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Recommendations	OFM	WSDOT	DAHP	Auditor Comments on Agency Responses
<b>Recommendation 29</b> – WSDOT should make certain that signatories to an archaeological Memorandum of Agreement are consulted and agree to any archaeological method changes in writing.	Concurs	Will take no position	Concurs	<p>WSDOT does not take a position on the recommendation. WSDOT states they are not principally responsible for details of the administration of the Memorandum of Agreement (MOA).</p> <p>The audit recommendation speaks to responsibilities WSDOT agreed to as a signatory to the MOA. The signatories hold responsibilities as stipulated in the agreement document according to 36 CFR 800.6 (c) (1) (2).</p> <p>Because WSDOT, as a signatory, made changes to the archaeological methods for which they were responsible under the MOA, they were required to consult with and seek agreement from the other signatories.</p> <p>The statements included in WSDOT’s response indicate they did not understand their requirements as a signatory to the MOA. This area should be prioritized for follow-up audit.</p>

### Legislative Auditor’s Response to Agency Comments – Fiscal Review

Recommendations Fiscal Review	OFM	WSDOT	DAHP	Auditor Response to Agency Comments
<b>Recommendation 1</b> – WSDOT should continue its efforts to improve the financial reporting structure for transportation projects so that in the future, project budget and expenditure information is presented in a format that is consistent and meaningful to decision-makers and the public.	Concurs subject to available funding	Concurs	Neutral position	No comment
<b>Recommendation 2</b> – WSDOT should establish and implement policies and guidelines for the appropriate application of different levels of economic analysis for proposed projects, including benefit-cost analysis, depending on the type and complexity of the proposed project.	Concur	Will consider recommendation	Neutral position	<p>WSDOT’s response indicates that value engineering is a more appropriate tool to implement the intent of this recommendation.</p> <p>The U.S. Department of Transportation guidelines on economic analysis and value engineering indicate that value engineering and benefit-cost analysis are not interchangeable.</p> <p>The audit clearly found that the value engineering applied for this project did not fully identify the benefits and costs of constructing pontoons at Port Angeles, including the potential value of constructing pontoons for SR 520.</p> <p>WSDOT’s comments indicate they do not understand that value engineering and benefit-cost analysis confer different analytic benefits. Based on the findings of the audit and comments provided by WSDOT, this area should be prioritized for follow-up audit review.</p>



## **Legislative Auditor Response to Agency Comments Relating To Application of Generally Accepting Auditing Standards and Other Agency Remarks:**

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WSDOT has alleged that the audit was not conducted according to Generally Accepted Government Auditing Standards (GAGAS). The following is the Legislative Auditor's response to WSDOT's allegations that demonstrate the audit has fully complied with these standards.

### **1. WSDOT comments regarding "General Conclusions from Limited or Singular Examples"**

WSDOT expresses concerns that the audit makes general recommendations about WSDOT's programs based on examination of one project. WSDOT references Government Auditing Standard (2003 Revision), Section 8.42: "In most cases, a single example of a deficiency is not sufficient to support a broad conclusion or a related recommendation." WSDOT provides the opinion that the report departs from Generally Accepted Government Auditing Standards.

#### **Legislative Auditor Response:**

*The report was conducted in accordance with Generally Accepted Government Auditing Standards.*

*There are instances in a performance audit where the auditor would base findings and recommendations on review of one project. GAGAS Section 8.42 indicates: "In **most** cases a single example of a deficiency is not sufficient to support a broad conclusion or a related recommendation." (emphasis added). The standard does not say this is necessary in **all** cases. The Port Angeles graving dock was a critical aspect of completing the Hood Canal Bridge, which was a major and complex capital project at WSDOT. The Hood Canal Bridge project budget was estimated at \$270 million, \$60 million of which was planned for the Port Angeles graving dock portion.*

*The audit recommendations were appropriate, given the audit objectives provided by TPAB, the importance and magnitude of the bridge project, findings from other recent audit work, and the persuasive evidence.*

*Evidence reviewed by the audit team was sufficient, competent, and relevant and supported a sound basis for the audit findings, conclusions, and recommendations (GAGAS Section 7.52). Evidence included a large volume of project documents, meeting minutes, and interview results. The conclusions drawn from the evidence were based on multiple examples of deficiencies. Further, the elements of a finding depend entirely on the objectives of the audit (GAGAS Section 7.62 and 8.14), which in this case was to review the Port Angeles graving dock for lessons learned.*

### **2. WSDOT comments regarding "Consultant's Preliminary Report Does Not Address Complete Audit Scope"**

WSDOT provides a detailed list of its own questions it believes were not answered by the audit, and states the audit did not fully address the scope, especially related to the interactions of interested parties. WSDOT also comments that activities that occurred after August 2003 are not addressed in the audit.

**Legislative Auditor Response:**

*The additional questions and comments posed by WSDOT are not included in the scope and objectives assigned by the Transportation Performance Audit Board (TPAB) for this review, which is included in Appendix 1 of this report. Consistent with GAGAS Section 3.19.a and 3.19.f, the audit work was focused on independent fulfillment of the study scope and objectives in order to be free from external interference by the audited agency.*

*The review of the interactions of interested parties, Study Objective 3, was not fully realized because shortly after beginning the audit, the Lower Elwha Klallam Tribe filed a lawsuit against the State and declined to participate further in the audit. JLARC notified TPAB that the Tribe's withdrawal from participation would limit the ability of the audit team to fully address the study objective. TPAB reviewed this matter at their October 7, 2005 meeting, and decided to continue with the project, recognizing limitations on addressing one of the study objectives. The audit team did have the benefit of one meeting with the Tribe and access to previously existing records. Therefore, limited observations concerning the interactions of interested parties are provided in the audit. Definitive conclusions about the effectiveness of the tribal consultation process could not be made. Qualifying statements with regard to this objective are referenced throughout the audit report, including: report digest, pages ii and vii; Chapter 1, page 3; Section 1, pages 1 and 12; and Section 3, page 105.*

*Activities that occurred after August 2003 are presented on pages 88-129 of the audit report, including: a review of the second site assessment, the Memorandum of Agreement process, consultation among the parties (federal/state/tribal government representatives), archaeological recovery activities between April and December 2004, and permanent work stoppage at the Port Angeles site.*

**3. WSDOT comments regarding: "New Material"**

WSDOT provides comments about the "course of development" of the audit and references "mistakes" and changes from the earlier technical review draft. WSDOT makes references about an "apparent legal analysis of the Constitution of the Lower Elwha Klallam Tribe."

**Legislative Auditor Response:**

*As part of its quality control process, in January 2006 JLARC provided a confidential technical review draft version of the report to the audited agencies. This is a standard JLARC practice, intended to assist with ensuring technical accuracy of report content (see: Report Digest, p. vii; Chapter 1, p. 3-4.) Technical review comments were received from both of the audited agencies. Most of the comments provided by WSDOT were not technical in nature, but rather editorial comments. Many of those comments indicated to the audit team that WSDOT did not understand some of the best practices and legal citation criteria presented in the technical draft. The audit team made edits to the preliminary report to clarify the criteria. Edits to improve the clarity of draft reports are common during technical review.*

*The audit report does not contain a legal analysis or make a statement about Lower Elwha Klallam Tribe's Constitution that is consistent with the characterization in WSDOT's June 2 agency comments. The report merely states that because the Tribe did not fully participate in the audit, the audit team did not have evidence regarding the Tribe's decision-making process for the graving dock.*

#### **4. WSDOT Comments Regarding “Lack of Adherence to Generally Accepted Government Auditing Standards”**

WSDOT raises a variety of issues related to adherence with Generally Accepted Government Auditing Standards:

- Required Statement of Compliance
- Broad Conclusions and Recommendations from a Single Example
- Need for an Adequate Understanding of Matters Reported
- Critical Conclusions Were not Based on Adequate Evidence

#### **Legislative Auditor’s Response:**

- *Required Statement of Compliance*

*JLARC’s statutory authority is established in RCW 44.28 and directs the Legislative Auditor to ensure that performance audits are conducted in accordance with Government Auditing Standards as applicable to the scope of the audit. The reference to the statute is included on the inside cover of each JLARC report and has been further clarified for the average reader who may not be familiar with JLARC’s statutory authority and practices.*

- *Broad Conclusions and Recommendations from a Single Example*

*The Legislative Auditor’s response related to broad conclusions and recommendations from a single example has been addressed in No. 1 above.*

- *Need for an Adequate Understanding of Matters Reported*

*The need for adequate understanding of matters reported is described in GAGAS Section 8.41. This section addresses requirements that audit reports must be complete. The report was complete and all quality elements were met. As required in GAGAS Section 8.41, the report states information and findings completely, and it includes necessary facts and explanations.*

- *Critical Conclusions Were not Based on Adequate Evidence*

*The example from WSDOT regarding inadequate evidence relates to the inclusion of the Tribe’s opinion on the consultation process. The finding in the audit report that there were divergent opinions about the consultation process was supported by evidence reflecting both WSDOT’s opinion and the Tribe’s opinion. The audit clearly reflected testimonial evidence from both parties and complies with requirements in GAGAS Section 7.53.e. Additional forms of evidence also supported the finding of divergent opinions on the consultation process.*

*WSDOT raised similar concerns regarding the evidence to support the use of cultural resource specialists. The audit complied with the same requirements regarding testimonial evidence for this issue as well.*

*The various forms of evidence utilized to establish appropriate basis of cause in this audit met multiple tests of evidence provided in GAGAS 7.52 a-b., and 7.53 a-f. Section 3.4.5.3 of the audit report presents multiple forms of evidence, and the evidence is presented in a manner to promote a fair perspective of all parties to the consultation process reviewed in this audit, which is consistent with GAGAS Section 8.13.*

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Presentation to Washington State  
Transportation Commission

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## TPAB Assigned Scope of Audit

- Analysis of **decision-making** and identification of **lessons-learned** about the Port Angeles Graving Dock Project:
  1. Site Selection
  2. Environmental Permitting and Streamlining
  3. Archaeological Assessment
  4. Interactions of Interested Parties
  5. Budget and Expenditures
  6. Recommendations- Identify lessons learned
- Audit covers Port Angeles activities through December 2004 – termination of PA construction.



## Constraint to Fulfilling One Study Objective

### ● Study Objective 3 – Interactions of interested parties.

- Lower Elwha Klallam Tribe filed lawsuit against the State shortly after audit initiated.
- The Tribe withdrew from participation in the audit interview process.
- Audit team had one meeting with the Tribe and access to previously existing project records.
- TPAB decided to continue project, recognizing the limitations on addressing one study objective.

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## Background: Hood Canal Bridge (SR 104) East Half Replacement Project and a Graving Dock



### ● Hood Canal Bridge:

- Draw span pontoon bridge
- Important transportation link between Kitsap and Olympic Peninsulas.
- 1997 WSDOT study indicated east half of bridge did not meet current engineering standards.
- WSDOT proposed to rebuild bridge by 2007.
- Project required a graving dock to build the pontoons and anchors.

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## Timeline of Key Events

1997 - 2001

**October 1997** – Identified need to replace east half floating portion of the HCB.

**January 1998** –

- Project Team initiated.
- Planning assumed use of graving dock used in previous projects (Concrete Technology Corporation).

**January 2001** - Project team focused on graving dock. Considered issuing RFP for graving dock sites. WSDOT had lease discussions with CTC, alternative sites suggested.

**December 2001** – WDFW identified permitting issues at CTC site.

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## Timeline of Key Events

2002

**May** – WSDOT CEVP analysis identified feasibility concerns of leased CTC site.

**July – August** - WSDOT suggested Port Angeles site for a state owned graving dock facility to IDT. IDT supports Port Angeles site.

**October** – WSDOT requests scope of work for archaeological survey, Sec. 106 tribal consultation form letter sent to Tribe the same day.

**November** – Archaeological field survey performed by Western Shore Heritage Services, Inc. (WSHS) and no cultural resources were identified.

**November** – WSDOT publicly announced Port Angeles as the site for graving dock.

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## Timeline of Key Events

2003

**January** – WSHS final report recommended monitoring of graving dock site. Report sent to Lower Elwha Klallam Tribe (LEKT) and State Historic Preservation Office (SHPO). SHPO concurred with report findings.

**February** – LEKT agreed in writing with the survey results and the proposed monitoring, recommended proceeding with caution.

**August 5** – Groundbreaking at Port Angeles site.

**August 16** – Potential archaeological site found by WSDOT.

**August 19** – First human remains found.

**September** – Second archaeological site assessment started.

**October** – SHPO concurred with finding that Tse-whit-zen village eligible for inclusion on the National Register of Historic Places.

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## Timeline of Key Events

2004

**March 16** – WSDOT, SHPO, LEKT, Federal Highway Administration (FHWA) and United States Army Corps of Engineers (USACE) executed archaeological Memorandum of Agreement (MOA). WSDOT and LEKT negotiated a \$3.4 Million settlement agreement and release of liability.

**April – November** - Work at site recommenced. Additional human remains found. Conflict among parties about how to proceed as additional discoveries are made.

**December 10** – LEKT requested permanent work stoppage at Tse-whit-zen village site.

**December 21** – WSDOT announced termination of the Port Angeles project.

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## Objective 1: Site Selection Audit Criteria

- Best practice standards used in project development:
  - Schedules – Comprehensive project development schedules required for complex projects.
  - Project Leadership - Both project management and leadership required.

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## Objective 1 - Site Selection Findings

- Certain aspects of the project process were lacking comprehensive plans and schedules.
- Decision to use Port Angeles was made under the assumption of an inflexible construction and permitting schedule and the date drove subsequent decisions.
- Analysis of using alternative state- or privately-owned graving dock sites was limited and poorly documented.

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## Objective 1: Site Selection Recommendations

- WSDOT should require the use of critical path scheduling of the project development processes used on complex projects.
- All project managers should be required to have project leadership, management and responsibility training.

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## Objective 2: Environmental Permitting Audit Criteria

Several environmental factors needed to be addressed:

- National Environmental Policy Act (NEPA)
  - Systematic, interdisciplinary approach – insure integrated use of *natural* and *social* sciences.
- State Environmental Policy Act (SEPA)
  - Environmental consequences must be considered, or review of alternatives, public review and comment.
- Endangered Species Act (ESA)
  - Federally listed endangered plants and animals.

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## Objective 2: Environmental Permitting Findings

- Transportation Permit Efficiency and Accountability Committee's inter-disciplinary team, and permit streamlining process both entered the project late.
- Resource agencies on team focused efforts on Endangered Species Act concerns.
- WSDOT did not use expertise to either confirm or contradict the regulatory agencies' positions, and the team's mostly verbal approval or disapproval of alternative sites.
- Review of archaeology, socioeconomics, and geology of site alternatives, and experts in those disciplines not represented.

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## Objective 2: Environmental Permitting Recommendations

WSDOT should:

- Incorporate ESA and fisheries considerations at the earliest possible opportunity for any transportation project with the potential for impact.
- Promote stronger inter-agency permitting team leadership by finding someone to provide focus for the overall team and a balance between WSDOT and regulating agencies.

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### Objectives 3 and 4: Archaeological Assessment and Consultation Audit Criteria – Section 106, National Historic Preservation Act

- Congress mandated in 1966 that:

“...the historical and cultural foundations of the Nation ...  
be preserved....”

- Critical concepts:

- All federal agencies have Section 106 responsibilities
- Federal agencies must take into account the effect of their undertakings on historic properties listed in, or eligible for listing in the National Register of Historic Places
- Section 106 compliance must be completed before funds are spent or the project is authorized, consultation persists throughout the process.
- Advisory Council on Historic Preservation must have the opportunity to comment on the undertaking.

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### Objectives 3 and 4: Archaeological Assessment and Consultation Audit Criteria – Federal Agencies and Section 106

- Federal agencies have legal responsibility to see that Section 106 process is carried out and that the consulting parties are properly involved.
- Federal agencies may delegate the Section 106 work to other parties.
- Federal Highway Administration delegated Section 106 authority to WSDOT.

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Objectives 3 and 4: Archaeological  
Assessment and Consultation Audit Criteria –  
What is the Area of Potential Effect?

“...the geographic area or areas within  
which an undertaking may directly or  
indirectly cause alterations in the character  
or use of historic properties, if any such  
properties exist.” 36 CFR 800.16

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Objectives 3 and 4: Archaeological  
Assessment and Consultation Audit  
Criteria – Geoarchaeology

- Best practices supported by multiple professional authors and state guidelines recommend the inclusion of the geoarchaeological discipline in archaeological investigations.

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## Objectives 3 and 4: Archaeological Assessment and Consultation Audit Criteria – Consulting Parties

### ● Consulting parties include:

- State Historic Preservation Officer (SHPO)
- Tribal Historic Preservation Officer (THPO)
- Indian Tribes and Native Hawaiian Organizations
- Local governments
- Applicants for federal assistance (e.g., state DOTs)
- Others with demonstrated legal, economic interest or concern with effects on historic properties

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## Objectives 3 and 4: Archaeological Assessment and Consultation Audit Criteria – Definition of Consultation

- ### ● Consultation means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process. 36 *CFR* 800.15

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## Objectives 3 and 4: Archaeological Assessment and Consultation Audit Criteria – Consultation

- Consultation should begin early in the planning process 36 CFR 800.2
- Government agency individuals should be of comparable stature to tribal leaders during consultation. (National Environmental Justice Advisory Council, 1999.)
- Agencies should not assume that a lack of tribal response means that the tribe has no interest in the undertaking. (NEJAC, 1999)
- Consultation should be a 2-way dialogue that provides meaningful involvement, all pertinent project information shared with the tribes so that the tribes may develop informed decisions. (NEJAC, 1999)

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## Objective 3: Archaeological Assessment – Findings

- WSDOT did not follow a *consistent* documented protocol for addressing Section 106 of the National Historic Preservation Act compliance needs.
- Area of Potential Effect (APE) was not adequately defined by WSDOT prior to the initial site assessment in 2002:
  - Indirect effects of dewatering, compaction, and vibration on archaeological resources were not defined.
  - Direct effects of the depth of sheet piling, location of bioswales, staging areas, and the depth of piping were not defined.

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### Objective 3: Archaeological Assessment – Findings

- WSDOT's Cultural Resources Specialist recognized the need for deep site testing.
- Consultant selected from on-call contract list did not include a geoarchaeology or geomorphology specialty.
- Consultant's scope of work was based on WSDOT'S insufficient description of the Area of Potential Effect.

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### Objective 3: Archaeological Assessment – Findings

Why did WSDOT's consultant miss the site?

- Non-systematic sampling pattern
- Geoarchaeological expertise was not applied
- Rainy weather conditions
- Modified sampling plan due to equipment malfunctions
- Despite these difficulties, the contract and approach in the field investigation were not adjusted.

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### Objective 3: Archaeological Assessment Recommendations

WSDOT should:

- Develop deep-site testing protocols, in consultation with SHPO, to minimize the chances of missing a buried site in the future.
- Provide a detailed written description of the Area of Potential Effect (APE) to the consultant and require that the consultant provide a detailed scope of work back to WSDOT.
- Add a geoarchaeology/geomorphology specialty, including deep-site testing, to the list of services in the Cultural Resource On-Call Contracts.

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### Objective 3: Archaeological Assessment Recommendations

WSDOT should:

- Require their project managers to contact their Cultural Resource Program for all of their Section 106 compliance issues.
- Implement methods to monitor a consultant's progress between major project milestones.
- Divide management tasks between a project manager and technical expert on large and complex projects.

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## Objective 4: Interactions with Interested Parties - Findings

- WSDOT initiated formal consultation late in the process through a letter to Lower Elwha Klallam Tribe.
  - Letter sent to the LEKT the same day a request for proposal was sent to the archaeological consultant.
  - LEKT was provided with an inadequate description of the project Area of Potential Effect (APE).
- State Historic Preservation Officer not consulted when Port Angeles locale under consideration.
  - SHPO learned about project upon review of initial archaeological assessment.

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## Objective 4: Interactions with Interested Parties - Findings

- Site monitoring plan required WSDOT consulting archaeologists to be on site if construction went below four feet.
  - No archaeologist was on site on August 16, 2003 when archaeological material first discovered.
- Face-to-face meetings with Tribe occurred after initial discovery of human bone fragments.
- Memorandum of Agreement entered into March 2004.

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## Objective 4: Interactions with Interested Parties - Findings

- Compressed bridge project schedule triggered changes in archaeological methodologies.
  - All parties to the agreement should have been consulted about major changes and the agreement formally updated.
- Good faith attempts at communicating were made, but divergent opinions exist about the nature of the communication.

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## Objective 4: Interactions with Interested Parties - Recommendations

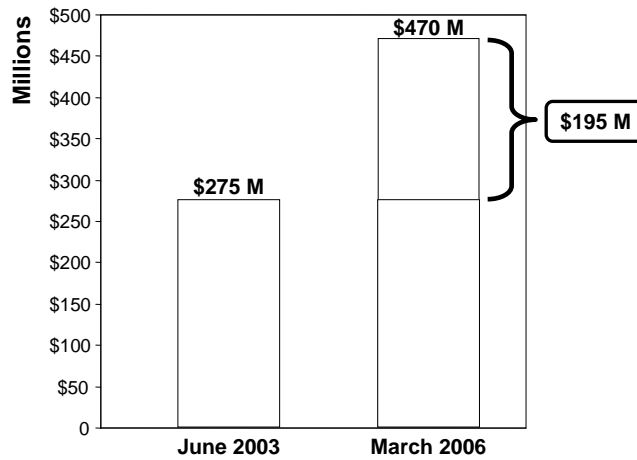
- Consultation should be initiated early and a dialogue maintained.
- Continue to implement procedural Programmatic Agreements with Tribes to assist in formalizing the consultation process.

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## Objective 5: Fiscal Review - WSDOT Budget for Hood Canal Bridge East Half Replacement Project

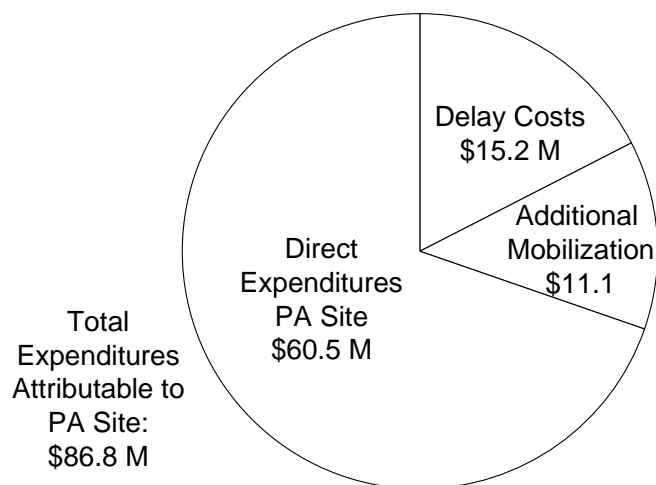


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## Objective 5: Fiscal Review – Port Angeles Site Expenditures as of July 2005



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## Objective 5: Fiscal Review - Findings

- Adjustments within program budget made consistent with internal project control policies and procedures.
- Difficulties in comparing project budget and expenditure information due to differences in public and internal reporting.
- Continued investment at the site based on professional judgment.
- However, no benefit-cost analysis of alternatives to support that professional judgment.

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## Objective 5: Fiscal Review - Recommendations

- WSDOT should:
  - Continue efforts to improve financial reporting structure for transportation projects so that in the future, project budget and expenditure information is presented in a format that is consistent and meaningful to decision-makers and the public.
  - Establish and implement policies and guidelines for appropriate application of different levels of economic analysis for proposed projects including benefit-cost analysis.

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## Summary of Conclusions and Lessons Learned

### ● WSDOT

- Project and contract management, geological and cultural resources assessments, and communication and consultation practices inconsistent with best practices.
- Project budget and expenditure reporting complex and economic analysis of alternatives not thorough.
- Excellent engineering design work and communication concerning bridge closure mitigation.

### ● DAHP (SHPO)

- Performed consistent with law.
- Could take more active role working with stakeholders to revise guidelines and standards, deep site testing protocols, and mapping potential buried sites.

### ● WSDOT and DAHP improvements are in progress.

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